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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN WOLFENBARGER,

Defendant.

Case No.: CR 16-519 LHK

**DEFENDANT'S OBJECTIONS TO
COURT'S FINAL PROPOSED JURY
INSTRUCTIONS [DKT] 409**

Court: Hon. Lucy H. Koh

Hearing Date: TBA

The Defense objects to the following:

- 1) Instruction 5: Unnecessary words (a typo) needs to be deleted from the top of the reasonable doubt instruction.
- 2) Instruction 17: The Defense objects on the grounds that by placing the three elements of the production statute under the heading "First, the defendant intended to," the instruction confuses and distracts from the separate purpose requirement of section 2251. The defense does not believe that it is possible to precisely fit the elements of section 2251 into the framework of the attempt instruction in a

1 sensible manner.

2 The defense instead proposes that after the first paragraph of the instruction
3 read as follows:

4 “First, the government must prove each of the following:

- 5 (1) The defendant intended to employ . . .
6 (2) for the purpose of . . ., and
7 (3) the defendant . . .

8 Second, . . . ,

9 Third.”

10
11 3) Instruction 18, for Count 2: Objection to the words, “any sexual activity language,” in the
12 second paragraph of the instruction because it may confuse the jury and appears to broaden the scope
13 of the instruction.

14 The defense requests deletion of the highlighted language below, from paragraph 2 of
15 Instruction 18:

16 “First, that beginning at a time unknown but no later than November 2013 and continuing
17 until at least January 2014,⁹ the defendant used a means or facility of interstate commerce¹⁰ to
18 knowingly attempt to persuade, induce, entice, and coerce an individual to engage in **any sexual**
19 **activity for which someone could be charged with** Attempted Production of Child Pornography in
20 violation of Section 2251(a) of Title 18 of the United States Code, as charged in Count One of the
21 superseding indictment. The elements of Attempted Production of Child Pornography are set forth
22 in Jury Instruction No. 17;¹¹ and . . .”

1
2 Dated: August 11, 2021

Respectfully submitted,

3 GEOFFREY HANSEN
4 Acting Federal Public Defender
5 Northern District of California

6 /S

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